

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**JAMES STEADMAN, JR., as Personal
Representative of the Estate of
ROBERT EUGENE JONES, Deceased,**

Plaintiff,

v.

**ETHEX CORPORATION, a foreign
Corporation and KV PHARMACEUTICAL
COMPANY, a foreign Corporation;**

Defendants.

*
*
*
*
*
*
*
*
*
*
*
*

CASE NO. 2:09-CV-00773-MHT

MOTION TO REMAND

Plaintiff, James Steadman, Jr., as Personal Representative of the Estate of Robert Eugene Jones, respectfully requests this Court to Remand this action to the Circuit Court of Barbour County, Alabama, pursuant to 28 U.S.C. § 1447(c). In support thereof, Plaintiff states the following:

1. This Court lacks subject matter jurisdiction.
2. Defendants, Ethex Corporation and KV Pharmaceutical Company, have failed to prove by a preponderance of the evidence that the amount in controversy requirement of 280 U.S.C. § 1332(a) has been met, as required by *Lowery v. Alabama Power Co.*, 483 F.3d 1184 (11th Cir. 2007).
3. Removal on the basis of the claim being brought under Alabama's Wrongful Death Act is procedurally defective because the Notice of Removal was filed more than 30 days after Defendants' received a copy of the Complaint.

These grounds are discussed in more detail in Plaintiff's Brief in Support of Motion to Remand which is filed contemporaneously with this motion.

Respectfully submitted this 1st day of September, 2009.

/s/ W. Roger Smith, III

W. ROGER SMITH, III (SMI257)

ANDY D. BIRCHFIELD, JR. (BIR006)

JERE L. BEASLEY (BEA020)

Attorneys for Plaintiff

OF COUNSEL:

**BEASLEY, ALLEN, CROW,
METHVIN, PORTIS & MILES, P.C.**

Post Office Box 4160

Montgomery, Alabama 36103-4160

Phone: (334) 269-2343

Fax: (334) 954-7555

CERTIFICATE OF SERVICE

I hereby certify that foregoing document was filed electronically on this 1st day of September, 2009 by uploading the same to the Court's CM/ECF system which will send a Notice of Electronic Filing upon counsel of record.

/s/ W. Roger Smith, III

OF COUNSEL